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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 PASQUAL GABRIEL MARTINEZ,

12 Petitioner,

13 v.

14 K. SANTORO, Warden,

15 Respondent.
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Case No. LA CV 15-5399 DSF (JCG)

**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate
19 Judge's Report and Recommendation ("R&R"), [Dkt. No. 27], Petitioner's Objections
20 to the Report and Recommendation ("Objections"), [Dkt. No. 32], and the remaining
21 record, and has made a *de novo* determination.

22 Petitioner's Objections reiterate the same arguments made in the Petition and the
23 Traverse, and lack merit for the reasons set forth in the R&R.

24 Accordingly, IT IS ORDERED THAT:

- 25 1. The Report and Recommendation is approved and accepted;
26 2. Judgment be entered dismissing this action with prejudice; and
27 3. The Clerk serve copies of this Order on the parties.
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1 Additionally, for the reasons stated in the Report and Recommendation, the
2 Court finds that Petitioner has not made a substantial showing of the denial of a
3 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
4 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
5 appealability.

6 Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
7 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court
8 decision at the time it was made. It follows that the record under review is limited to
9 the record in existence at that same time *i.e.*, the record before the state court.”).

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11 5/25/17

12 DATED: _____



13 HON. DALE S. FISCHER
14 UNITED STATES DISTRICT JUDGE
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